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ABSTRACT

This magazine aims to help high school teachers of civics, government, history, and law and law-related education program developers educate students about legal issues. This volume focuses on culture, law, conflict, and change. The first article, "Trying Beliefs: The Law of Cultural Orthodoxy and Dissent" (J. H. Landman), demonstrates how U.S. guarantees of religious expression and limits on political speech reflect England's legal legacy. "Slap Leather! Legal Culture, Wild Bill Hickok, and the Gunslinger Myth" (S. Lubet) uses an example from the Wild West to explore how the culture of the times can influence what happens in the courtroom. "Culture on Trial: Censorship Trials and Free Expression" (M. Heins) explains how censorship trials have tried to define what people may see and say. In "Perspectives," there are three articles: "Lawyers in Space: Teaching about Law with Science Fiction Materials" (P. R. Joseph); "Lawyers and Courtroom Trials on Prime-Time Television" (D. R. Papke); and "Tuning in to the Courtroom: A Brief History of Television and Criminal Trials" (M. S. Trossman). To help students learn how to participate in and influence public debates on the complex relationship between culture and the courts, "Students in Action" offers the following: "When Guilt or Innocence Depends on the Era" (S. Lubet); "Changing Times Changing Censorship" (W. Routier); and "TV in the Courtroom" (G. Mertz). "Learning Gateways" introduces students to English and U.S. laws, policies, and court actions designed to accommodate and sometimes suppress cultural and political outlooks. The "Supreme Court Roundup" (C. F. Williams) discusses recent cases involving student-graded classroom work, school urinalysis drug testing, and a permit requirement for door-to-door activist advocates. "News from Capitol Hill" (A. S. Heinz) offers a look at the opening of a legislative session dominated by debate over the War on Terrorism, homeland security, and the economy. "Teaching with the News" (J. H. Landman) looks at the devastation wrought by the destruction of historical monuments and the mounting support for international authority over such crimes against culture. "Media Specialist's Corner" (J. Kittlaus) offers students online primary documents related to cultural influences on law and

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the courts and lists books for librarians to enhance collections on the topic. (BT)

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The Trials of Culture--Law, Conflict and Change.

Pam Bliss, Editor
Howard Kaplan, Editor

American Bar Association, Chicago, IL.
Public Education Div.

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ON LAW & SOCIETY

THE

Trials of Culture

Law, Conflict, and Change

ABA

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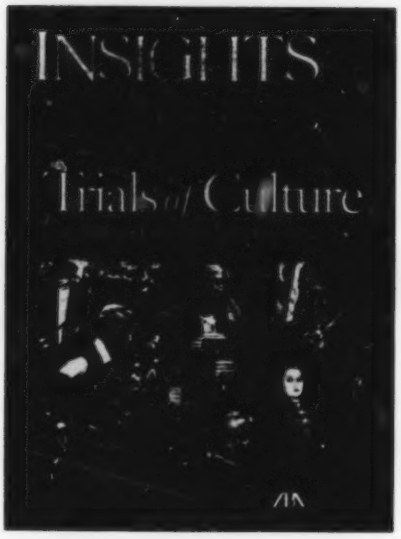

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SPECIAL COVERAGE

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Come online to learn how you can make this edition a vital part of your classroom instruction on the judicial system (click "Editor's Note").

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Trying Beliefs: The Law of Cultural Orthodoxy and Dissent

U.S. guarantees of religious expression and limits on political speech reflect England's legal legacy.

by James H. Landman

The United States today is accurately described as both a multicultural and an open society. It comprises a vast array of ethnic and racial groups, religious beliefs, and other social and political affiliations. Individuals have significant freedom to define and express themselves through their cultural affiliations.

Although the United States is multicultural, English legal traditions provided the material from which our constitutional structure was fashioned. This article explores the extent to which English laws defining religious and policy orthodoxy were retained, altered, or discarded by the framers of the Constitution, and it discusses the continuing force of this legal legacy in the United States today.

"[T]he variety of balancing tests the Court has formulated has failed to define a bright line around protected speech."

Religious Orthodoxy and Dissent

With the 1791 ratification of the First Amendment's provision that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," the United States attempted to establish the legal grounds for defusing what was then, and continues to be, one of the most volatile sources of cultural strife—clashes between religious beliefs. It also attempted to separate what had in English law long been a powerful alliance between church and state, in which an offense against one was often treated as an offense against the other. In England, political and religious orthodoxy went hand in hand.

The First Amendment's free exercise and establishment clauses were a direct response to the English experience of an established church—the Church of England. Together they represent the dismantling of a legal structure that had promoted a religious orthodoxy and prosecuted religious dissent. But what has been the practical effect of this legal dismantling on religious cultures—both majority and minority—in the United States?

Historically, the record has been mixed. For most of our history, the majority of Americans have practiced some form of Christian Protestantism. While legal attempts to overtly ban or suppress the practice of other faiths have been rare, legislators at both the national and state levels have demonstrated considerable imagination in passing laws that ostensibly promote a state purpose while adversely affecting the ability of minority religious cultures to practice their beliefs.

In 1925, for example, the U.S. Supreme Court in *Pierce v. Society of Sisters* declared unconstitutional an Oregon state law that required all children between

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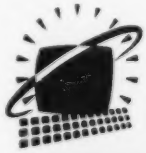

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8 and 16 to attend public school. Public schools at that time still played a significant role in inculcating Anglo-Protestant moral values. The Oregon law, which on the surface promoted the state's interest in ensuring an adequate education for its citizens, also had the practical effect—implicitly acknowledged by the Court—of destroying the Roman Catholic parochial schools that had developed to give parents an alternative to the moral education offered by the public school systems. In another example, at the national level, the constitutional amendments first authorizing and then repealing liquor prohibition have been read as an attempt to maintain an Anglo-Protestant morality against the cultural norms of Roman Catholic Irish and German immigrants.

On the other hand, the First Amendment's religious clauses have frustrated many faith-minded Americans who see establishment clause interpretations that, for example, ban prayer in school or at other public events as a restriction of their rights to freely exercise their religion and even as a government assault on their religious beliefs.

The American experience may simply attest to the unavoidable tensions that result when strong cultures of belief are allowed to coexist in a society. The more flagrant government attempts to suppress religious minorities made earlier in U.S. history have largely subsided, although the debate about the role of organized religion in American civic and cultural life maintains its vigor.

Political Orthodoxy and Dissent

The problem of political dissent has never been fully resolved in the United States, and in this area the English legal structure for prosecuting unorthodox beliefs has maintained a continuing influence on U.S. law.

The precedent for punishing political dissent had been well defined in English law. The Treason Act, passed by Parliament in 1352, gave to the U.S. Constitution its definition of *treason* as (1) levying war against the United States or (2) "adhering to their enemies, giving them aid and comfort." The 1352 English act also includes a third definition of *treason*, omitted from the U.S. Constitution, which consists of "compassing or imagining the death of the king."

The crime of compassing or imagining the death of the king was the most problematic because it criminalized an intention—what the eighteenth-century jurist William Blackstone described as "the purpose or design of the mind or will." And because it consisted of an act of the mind, English law developed the doctrine that it could not come within judicial review unless it was accompanied by some overt act. That overt-act requirement was retained in the U.S. Constitution.

Illustration by Rick Incrocci

English treason law was complemented by a second, more flexible law to control dissident political cultures—the English law of seditious libel. *Seditious libel*—criticism of public persons or the government—was defined as a crime because it tended to undermine respect for public authority. Moreover, since the crime was based upon the need to maintain public respect for the government and its agents, truth could not be a defense against a seditious libel charge.

There have been relatively few treason trials in U.S. history and few controversies surrounding interpretation of the Constitution's relatively restrictive treason clauses. However, the continuing force of the English common law of seditious libel in U.S. law is a far more controversial issue. Arguably, the limited grants of powers to the branches of government in the original U.S. Constitution—grants that did not include authority to regulate speech—denied the federal government authority to try political dissidence that did not reach the level of treason; that is, dissidence that was limited to the expression of thoughts or ideas against the government. This implied prohibition against laws prosecuting dissident speech was arguably strengthened by the First Amendment's provisions that "Congress shall made no law ... abridging the freedom of speech."

But some have argued that the very language of the First Amendment's guarantee of "freedom of speech" is meant simply to echo and absorb the notion of freedom of speech put forth by the English jurist William Blackstone—that is, one is free to speak, but one is not immune from punishment if that speech is seditious or otherwise injurious to the common good. Indeed, in one of the Supreme Court's landmark sedition cases, *Abrams v. United States*, 250 U.S. 616 (1919), upholding the conviction of five alien radicals for the publication of two leaflets criticizing the U.S. war effort during World War I, the government's winning case included the argument that the First

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Amendment left the English common law of seditious libel in force.

The *Abrams* case involved the trial of individuals under the 1918 Sedition Act (an amendment to the 1917 Espionage Act), one of several sedition acts that the federal government has enacted over the course of U.S. history. Other such acts include the 1798 Alien and Sedition Acts and the Alien Registration Act (also known as the Smith Act) of 1940. The Supreme Court has upheld the convictions of individuals tried under both the 1918 and 1940 acts. All these acts were promulgated during times of great uncertainty, when the nation was actively engaged in or on the brink of war, when tolerance of dissent tends to be low and distrust of cultural "outsiders" tends to run high. It is not coincidental that two of these acts—the 1798 legislation and the 1940 Smith Act—explicitly linked sedition to concern over alien populations in the United States.

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Ethel and Julius Rosenberg, the first U.S. civilians ever put to death for wartime spying, were executed for treason in 1953 despite clemency pleas from many respected people.

The Supreme Court struggled over the course of the twentieth century to define a workable balance between free speech rights and the need of the federal government to protect national security, including the test that spoken or published words present "a clear and present danger" of substantive evils that Congress has the right to prevent. But the variety of balancing tests the Court has formulated has failed to define a bright line around protected speech, and absolutist interpretations of the First Amendment, which would deny the government any power to restrict speech, have not prevailed.

The government has also used "extralegal" means to restrict speech and political association. The House Committee on Un-American Activities, for example, used the power of stigma to investigate suspected affiliations with the Communist Party during the Cold War years of the 1950s, as well as agreements with major Hollywood studios to form the notorious "blacklists" that were used to deny employment to individuals in the entertainment industry who refused to testify. FBI surveillance has also been used to harass individuals whose politics or lifestyle is not "approved," such as John Lennon.

Conclusion

The United States has entered a new time of international crisis, and there are again rumblings that sedition may stage a new appearance in our political culture. In the December 6, 2001, testimony of Attorney General John Ashcroft to the Senate Committee on the Judiciary, Ashcroft criticized those "who pit Americans against immigrants, and citizens against noncitizens" and "those who scare peace-loving people with phantoms of lost liberty," stating that their "tactics only aid terrorists—for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends." These comments cast a wide net. They come close to an accusation of providing "aid and comfort" to our enemies in their accusations that dissenting speech may "aid terrorists," giving "ammunition to America's enemies."

Times of political or military crisis have consistently produced new fears of sedition, and during such times the courts have allowed the government generous rein to restrict speech that poses a perceived threat to the government. Real or imagined, these fears have kept alive the legacy of sedition laws in American political culture. And though a culture of political dissent has existed throughout U.S. history, that culture has proved most threatened when dissenting voices might most need to be heard.

FOR DISCUSSION

How did the First Amendment represent a discarding of the English law of religious orthodoxy?

How has English law continued its influence over U.S. law regarding political dissent?

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Trials of Culture

Slap Leather! Legal Culture, Wild Bill Hickok, and the Gunslinger Myth

The culture of the times can influence what happens in the courtroom—just look at the Wild West!

by Steven Lubet

In America, there may be no more enduring character than the gunfighter. Popularized in dime novels, glamorized in countless Hollywood films, and serialized on television from *Gunsmoke* to *Wild, Wild West*, his image is nearly synonymous with the frontier itself. Sometimes a hero, sometimes a villain or outlaw (not at all the same thing), and lately an enigma, he is always quick on the draw—ready to stand his ground and shoot it out.

The gun duel has its own legendary structure. Two men face each other on a dusty street, guns holstered, trigger fingers itchy. They stand ready, hands poised, each waiting for the other to make the first move. One of the combatants, usually the bad guy, reaches for his weapon, sometimes shouting a taunt or a challenge. "Slap leather!" The firing begins, ending only when one man lies bleeding in the dust. The winner, either hero or antihero, walks slowly (and quietly) away.

There is seldom, if ever, an aftermath to the gunfight. No posse, no arrest, certainly neither trial nor imprisonment. If the sheriff so much as arrives on the scene, the bystanders quickly assure him that it was a "fair fight" or perhaps "self-defense," which is sufficient to conclude the investigation and dismiss all thoughts of bringing charges.

Thus, the mythotype of the gunfight depends wholly on its form. When two armed men openly confront each other, it is their business and only their business. So long as there is no sneaky ambush or ganging up, the larger community will remain uninvolved. There will be no postmortem talk of prosecution, or police brutality, or even of protecting innocent bystanders from stray bullets. The bad guys smirk at the law's impotence, while lawmen (and their vigilante equivalents) revel in the cheers of the crowd. In neither case is the premise questioned.

"Western juries (and judges) ... proved singularly sympathetic to claims of self-defense ... often freeing men who would surely be considered guilty ... by contemporary standards."

Gunfighter as Cultural Icon

How did the gunfighter become a cultural icon? He has no real basis in history. While there were occasional shootouts in the Old West, they were relatively few and far between. Moreover, the battles that did occur were anything but the quick-draw duels in the street that form the climax of so many movies. And, of course, it could not happen in a society that was even loosely tethered to law, as gunfights would have been discouraged beforehand and investigated afterward.

Of course, the American frontier was always rough and unruly, but only the post-Civil War West seems to have generated the gunfighter-hero. Part of the

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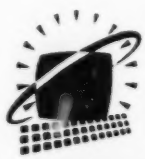

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reason is the unique social and political circumstances of the time and place. The availability of mass-produced side arms, combined with lingering hostility from the recently concluded war, created a cultural environment in which many men had both the inclination and the ability to act on their resentments. Railroads, cattle drives, land rushes, and mining booms all served to throw together people from diverse backgrounds, with conflicting economic goals. Ranchers, cowboys, sod busters, prospectors, land speculators, gamblers, merchants, and sheepherders did, in fact, have trouble getting along. Stagecoaches were easy prey for robbers, and sheriffs did, in fact, organize posses to track down outlaws.

It cannot be forgotten that the Wild West attracted magazine and newspaper correspondents, many of whom had learned their skills while covering the Civil War. For the first time, there was extensive and constant media demand for stories of the frontier. Eager to provide copy to an avid market, reporters and dime novelists tracked down "tall tales and tangled truths." They were not particularly picky about the details. Thus, James Butler "Wild Bill" Hickok's exaggerated exploits were duly chronicled as fact for the delight of eastern readers, first in *Harper's New Monthly Magazine* and later in numerous other magazines, newspapers, and dime novels.

Wild Bill was hardly alone, however, as other writers extolled the virtues of gunmen still remembered today (Buffalo Bill Cody, Doc Holliday, Kit Carson) or since forgotten (Moses "California Joe" Milner, Medicine Bill Comstock, Dirty Dave Rudabaugh).

None of this would have been possible, however, if gunfighters had been scorned in their own hometowns. It would have been impossible for gunslingers to become literary heroes if the real-life models had not been inclined to brag, as Hickok did without apparent fear of ostracism, about shooting dozens of men. In the absence of popular support in the West, gunslingers could never have become folk heroes in the East.

This is where law and legal judgments come into play, both reflecting and in turn influencing popular culture.

Law and Order in the Wild West

Contrary to cinematic imagery, the Wild West was not devoid of law and order. Along with settlement came social institutions such as churches, schools, and businesses, all of which demanded law enforcement. Indeed, most towns were run by business elites who quickly enacted gun-control legislation and established local police forces, some of which—such as the Dodge City Peace Commission—became justifiably famous for their effectiveness and professionalism.

Illustration by Rick Incrocci

Consequently, shootings did not go unnoticed, and real-life murderers did not go unapprehended. Arrests were made and trials were held.

Western juries (and judges), however, proved singularly sympathetic to claims of self-defense, justification, or "misadventure," often freeing men who would surely be considered guilty—of something, if not murder—by contemporary standards.

For example, on October 28, 1880, a drunken cowboy named Curly Bill Brocius shot and killed Deputy Marshal Fred White of Tombstone, Arizona. Some of the facts were in dispute, but it was certain that Marshal White had been attempting to disarm Brocius when the cowboy's gun fired, intentionally or not. It was not disputed that Curly Bill and his pals had been firing their weapons recklessly. And Brocius was well-known for his "Curly Bill Spin," a technique that could be used to shoot a man who was trying to disarm him. Nonetheless, a territorial judge ruled the shooting an accidental homicide, freeing the defendant, the dead marshal notwithstanding.

This judicial tolerance for gunplay reflected an all-or-nothing attitude toward homicide (and presumably, toward other crimes of violence). Either the shooting was intentional and therefore murder, or it was unintentional and therefore not criminal.

Legal culture and popular culture, in effect, reinforced each other, but only within limits. Outlaws were apprehended in the West. Many were hanged and others were gunned down. Nonetheless, the apparent lenience of the courts was crucial to the development of the gunfighter myth.

Wild Bill Hickok's Trial

In the entire history of the Wild West, the closest thing to an actual "slap leather" gunfight may have been the showdown in Springfield, Missouri, on July 21, 1865, in which Wild Bill Hickok shot and killed Davis Tutt. Hickok was arrested the following day and later put on trial. (For the facts of the case and

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details of the trial, read Students in Action—which you can share with your class—on pages 17–18.)

Exercising its discretion, the jury in the case voted quickly for acquittal. It was a verdict that was not completely popular at the time. The *Missouri Weekly Patriot* censured the jurors for disregarding both "their obligations to the public interest [and] a proper respect for their oaths." It was not entirely the jury's fault, however. Springfield's leading citizens, argued the editors, had likewise "failed to express the horror and disgust they felt," thus forfeiting their opportunity to influence the jury's verdict in the direction of law and order. On the question of culture versus law, the *Missouri Weekly Patriot* made this astute observation:

> Public opinion has much to do with administration of justice, and when those whose sense of justice and respect for law should prompt them to speak out and control public sentiment, fail to do so, whether from fear or from indifference, we think they should not complain of others. (Rosa, 78–79)

Of course, there may well have been wishful thinking on the part of the press. It is not so clear that Springfield's prevalent sense of justice dictated such rigorous respect for the law.

Relationship Between Culture and Law

This is not to say that Wild Bill should have been convicted or that the jury was wrong. Rather, the point is that court judgments are derived from a combination of abstract legal principles (according to the presiding judge in the Hickok trial: "the defendant cannot set up justification that he acted in self-defense if he was willing to engage in a fight with deceased") and factually specific cultural determinations (again, as noted by the judge: "Tutt at the time he was shot by the Deft was advancing on him with a drawn pistol").

Popular culture, of course, informs law. Law in its flexibility, for better or worse, facilitates the further direction of popular culture.

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Wild Bill Hickok, legendary lawman of the Old West, was also an ill-tempered gambler who accidentally shot a police officer and stood trial for killing a gunfight opponent. Cultural outlooks of the times probably accounted for his murder acquittal.

Returning to our context, we can see that the development of the gunslinger myth was at least in part dependent upon the willingness of frontier courts to excuse gunplay. If James Butler Hickok, and others like him, had been convicted and imprisoned or hanged, there would have been no opportunity for dime novelists and Hollywood screenwriters to grow rich by exaggerating their adventures.

Perhaps this phenomenon can be illustrated by one further, serendipitous —or is it ironic?—example. Wild Bill was acquitted on August 6, 1865, and thereby spared the noose or stockade. Just a few weeks later, on September 13, 1865, Hickok was introduced to Colonel George Ward Nichols, a writer for *Harper's*, who began the interviews that would turn the gunfighter into a legend.

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FOR DISCUSSION

How did the gunfighter become a cultural icon?

How did the trial of Wild Bill Hickok reflect the popular culture of the time?

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Trials of Culture

Culture on Trial: Censorship Trials and Free Expression

What is obscene? Sacrilegious? Politically subversive? Historically, censorship trials have tried to define what Americans may see and say.

by Marjorie Heins

For decades, "Banned in Boston" was a wonderful catchphrase for improving book sales. But if Boston was a leader in literary censorship, the rest of America was not far behind. Especially when the subject was sex, government authorities competed for the distinction of banning works they thought immoral.

The bans were usually based on state or federal obscenity law. But what was "obscenity," and how were prosecutors, courts, and publishers to identify it? An English judge defined *obscenity* in 1868 as material that tends to "deprave and corrupt those whose minds are open to ... immoral influences" and that suggests to "the young of either sex ... thoughts of a most impure and libidinous character." U.S. courts followed this test for most of the next century. "Obscenity" thus turned on the presumed vulnerability of youth. It wasn't until the 1930s that judges began to rebel against a legal standard that deprived adults of literature thought corrupting to children. The landmark case involved James Joyce's *Ulysses*.

"It wasn't until the 1930s that judges began to rebel against a legal standard that deprived adults of literature thought corrupting to children."

Trials of *Ulysses*

In 1920, a literary magazine published the "Nausicaa" episode of *Ulysses*, in which the hero Leopold Bloom masturbates while watching a young woman display a bit of undergarment. The New York Society for the Suppression of Vice initiated a prosecution under the state's obscenity law.

The trial judges were not impressed by expert testimony that described *Ulysses* as a brilliant work. One of the judges refused to allow passages to be read aloud in court because females were present (including the magazine's editors). "Nausicaa" was ruled obscene, and *Ulysses* was banned in the United States.

In 1933, Random House challenged the ban by attempting to bring *Ulysses* into the country. U.S. Customs seized the book and filed a forfeiture application in federal court. The case was assigned to Judge John Woolsey, and the second trial of *Ulysses* began.

After studying the work, Woolsey ruled that despite its erotic passages and vulgar words, *Ulysses* did not violate federal obscenity law. Woolsey said the proper test of obscenity is whether the work would "lead to sexually impure and lustful thoughts" in a normal adult.

The Court of Appeals for the Second Circuit affirmed, explicitly rejected the vulnerable-child rule because it would suppress "much of the great works of literature." Although doubting that *Ulysses* was the masterpiece its admirers claimed, the court opined that "it is a sincere portrayal" of the "stream of consciousness'

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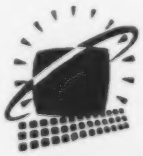

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of its characters" and was "executed with real art."

Ulysses could now be sold in the United States, but it would be another 23 years before the Supreme Court followed the Second Circuit and rejected the vulnerable-child standard, announcing that the First Amendment does not permit government to reduce the adult population to reading "only what is fit for children." The Court then created a test for obscenity that turned on whether a work's dominant appeal was to the "prurient interest" of average adults and whether it was "utterly without redeeming social importance."

But the problem of shielding minors remained. In 1968, the Supreme Court attempted to resolve it by inventing a "variable obscenity" rule under which "girlie magazines" and similar materials, even though protected by the First Amendment, lost that protection if distributed to minors.

Then in 1973, the Court replaced the "utterly without redeeming social importance" test with a new three-part obscenity standard for adults: whether the material was "patently offensive" according to "contemporary community standards," appealed to "prurient interests," and lacked "serious literary, artistic, political, or scientific value." Although today this standard is generally thought to encompass only hardcore pornography, the vagueness and subjectivity of such terms as "patent offensiveness" and "serious value" leave a wide berth for prosecuting artists who may be the James Joyces of the future.

Film Censorship and *The Miracle*

While courts in the mid-twentieth century were expanding constitutional protection for literature, movies were increasingly targets of censorship. States and localities established licensing boards empowered to ban any film they deemed "immoral," sacrilegious," or otherwise "harmful." Using these free-floating standards, Chicago banned newsreels of police shooting at labor pickets; Ohio condemned *Carmen* because women were shown smoking in public; Memphis refused to license a film that showed black and white children in school together.

It was inevitable that eventually the Supreme Court would acknowledge cinema's importance as a medium of expression. That point came in 1951 when New York State revoked a license it had issued for Roberto Rossellini's *The Miracle*, on grounds of sacrilege, after a pressure campaign from the Catholic Church.

The Miracle tells the story of a peasant woman who is plied with drink and then seduced by a vagabond whom she mistakes in her stupor for St. Joseph. When she becomes pregnant, her fellow villagers mock and torment her. Angry pickets from the Catholic Legion of Decency soon appeared outside the Manhattan theater where the film was showing. Francis Cardinal Spellman, head of the New York Archdiocese, called *The Miracle* "vile and harmful," insulting to "Christian faith and Italian womanhood," and communist inspired.

Not all Catholics agreed with Cardinal Spellman. A group of Catholic intellectuals found *The Miracle* "deeply moving" and "profoundly religious." Rossellini himself protested that his intentions were pious: "*The Miracle* occurs when, with the birth of the child, the poor demented woman regains sanity in her maternal love." But Spellman was a powerful political figure, and the state Board of Regents soon revoked *The Miracle*'s license.

The film's distributor mounted a court challenge, not only to the vague and subjective "sacrilege" standard, but to the very existence of movie licensing. The state courts rejected his arguments, relying on a 1915 Supreme Court ruling that films were only a business, not protected by the First Amendment. But in 1952, the Supreme Court reversed.

The opinion in *Burstyn v. Wilson* first did away with the archaic ruling that cinema was not protected by the First Amendment, then ruled that "sacrilege" was not a permissible censorship standard. The word is too vague, the Court said, setting the censor "adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies." But the Court left open the question of whether states could impose prior censorship under a law designed "to prevent the showing of obscene films."

The decision thus did not do away with film censorship. Licensing boards continued, using other vague standards such as "immorality." Then in 1965, the

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Under English law, witchcraft was punishable by death. In 1692, in Salem, Mass., witchcraft trials resulted in 19 hangings and 150 jailings. A year later, all those still in jail were freed. The colony paid reparations to victims' families in 1711.

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PERSPE

Lawyers in Space: Teaching About Law with Science Fiction Materials

by Paul R Joseph

Some have said that the United States is a litigious society. Perhaps what we really are is a legal society. We look to law to set the structure inside which our democratic freedoms flourish.

If law is at the center of our most important national debates, the public should be broadly educated to understand the basic outlines of our law and legal system. We need to find more ways to teach about law.

Popular-culture depictions of law are gaining increasing attention. From real law on television (for example, Court TV) to fictional representations of law and lawyers (for example, *Law & Order*), there is a rich body of films, TV series, books, Web sites, and so on, from which to choose. While fictional depictions of law are not likely to be technically accurate in many details, the best do explain some legal issues and institutions in a helpful and usable way.

Shows and films that are "about" lawyers are obvious targets for teaching. Less obvious, but often very valuable, are materials that speculate about the future, play with alternate realities, or ponder the effect of technology on life and culture. I'm speaking about science fiction.

One of the wonderful things about science fiction is that it puts old debates in new contexts and may allow students to see issues in new ways. For example, the abortion debate is so emotionally charged that often each participant has a set-piece speech, nobody listens to anyone else, and it's easy to cause hard feelings. Why not change the venue?

What if a mechanical man, an android, is about to be destroyed for scientific research purposes? Should the android have a "right" to object? Does the android have any rights at all? What are the criteria for having rights? Exactly this issue was posed in a classic episode of *Star Trek: The Next Generation*. Written by lawyer Melinda Snodgrass, the show explored the question without ever mentioning abortion—a freeing way to think without the baggage of our current intractable debate.

Currently, there is a major debate about cultural relativism. Some argue that it is wrong to condemn other cultures because they do things differently, even in ways we find abhorrent—essentially, that all law is relative to culture.

Science fiction has exposed this question too. An episode of *Deep Space Nine* presented a culture in which the purpose of a trial is not to ascertain guilt, but rather to help the accused face his or her guilt and repent. What are trials for? How should they be run? Are there any basic fairness requirements for them?

There are many more examples. Certainly, more traditional popular-culture materials provide great vehicles for talking about law and legal issues. But don't neglect some of the more unusual possibilities, including science fiction.

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Learn More

To learn more about law, culture, and the media, editor Paul R Joseph invites you to visit "Picturing Justice: The On-Line Journal of Law & Popular Culture" at www.picturingjustice.com.

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C T I V E S

Lawyers and Courtroom Trials on Prime-Time Television

by David Ray Papke

Less than half the U.S. population has ever consulted a lawyer, and a still smaller portion has participated in or even seen a courtroom trial. However, nearly all adult Americans have watched countless attorneys and witnessed dozens of trials on prime-time television. If we stop to contemplate the forms of this fictional drama and then watch individual shows with a critical eye, we might clarify our expectations regarding actual lawyers and courtroom proceedings.

Lawyers and courtroom trials have been staples since the beginning of prime-time network television in the late 1940s. Many of the very earliest shows were derived from actual cases. In *They Stand Accused* (1949–52), actual lawyers played themselves, and Chicago attorney Charles Johnston assumed a position on the television bench. At the end of each show, "jurors" chosen from the live audience rendered a verdict!

This blending of fact and fiction withered in the 1950s as producers realized that viewers preferred reappearing lawyer heroes and standardized tales seen every week on the same night at the same time. The most successful lawyer show of this era was *Perry Mason* (1957–66), starring Raymond Burr. In almost all of the shows from the 1950s and 1960s, the criminal defense lawyers worked on their own or in small partnerships, excelled in the courtroom, and were able to both protect the innocent and identify the guilty.

Shows of this sort continued into the 1970s and 1980s. However, when *L.A. Law* premiered on September 15, 1986, television viewers saw a new type of lawyer show that featured not a heroic legal knight fighting for criminal justice but rather a diverse law firm of flawed individuals able to handle civil as well as criminal cases.

Today's lawyer shows with courtroom trials represent the TV programming that dominated in past eras. *Law & Order* (1990–present) recalls the documentary style and real-life shows of early television. *Philly* (2001–present), with its devoted criminal defense lawyer, recalls the shows of the 1950s and 1960s, albeit in a grittier, more realistic setting. *The Practice* (1997–present), *Family Law* (1999–present), and even the comedy *Ally McBeal* (1997–present) feature law firms whose members must coordinate their court dates with scheduled trips to the therapist.

What are the strengths and weaknesses of the lawyers we encounter on prime-time television? In what ways do TV's fictional courtroom proceedings deliver justice? To what extent can television lawyers and courtrooms be replicated in the complicated society in which we live? If we ask these questions as we sit on our couches in front of the TV, we will be better able to articulate what we expect from real-life lawyers and courts.

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Tuning In to the Courtroom: A Brief History of Television and Criminal Trials

by Mindy S. Trossman

As the twentieth century came to a close, we looked back at dozens of them. Trials of the century, that is. From the Scopes "Monkey Trial" to the Lindbergh baby kidnapping, from the spy trials of Julius and Ethel Rosenberg to the murder trials of Sam Sheppard, Charles Manson, and Andrea Yates. And, of course, the impeachment of a president.

What makes a case "the trial of a century," as each of these was called? The crime, the accused, the lawyers, the legal issues—and certainly the media.

Early on, cameras were allowed into the courtroom during the trial of Bruno Hauptmann, who in 1935 was accused of kidnapping and murdering the baby of aviation hero Charles Lindbergh. Some 700 reporters and 130 cameramen descended on the tiny town of Flemington, N.J., for the trial, and their outrageous actions helped trigger the movement against cameras in the courtroom. Encouraged by the ABA and fearing that criminal proceedings would turn into carnival-like atmospheres, most courtrooms banned cameras shortly after the *Hauptmann* case. It stayed that way for nearly half a century.

As television became a reliable information source in the late 1960s, broadcasters were able to demonstrate to judges that they could act responsibly if permitted to film in court. The increasing pervasiveness of television in our society also helped change judicial attitudes. By the mid-1970s, courts had begun to experiment with cameras inside; by 1980, many states had lifted the ban. Today, almost all states permit broadcast coverage of at least some judicial proceedings. However, federal courts, including the U.S. Supreme Court, still prohibit any kind of broadcast coverage.

As widespread as the practice has become, critics still argue that broadcasting court proceedings does not add to the public's understanding of the judicial process and can even cause confusion. But for all the criticism of broadcast coverage, its potential to illuminate the proceedings is unmistakable. Today, cameras in the courtroom are considered a logical extension of the constitutional principle of a public trial.

Yes, court hearings can be deliberate and messy. But broadcast coverage of criminal trials, while distasteful to some, has helped demystify the judicial system. The *Chicago Tribune*, commenting about the *O.J. Simpson* case, observed that people ordinarily unaccustomed to courtroom procedures got a chance to watch it up close, warts and all.

As broadcast coverage of criminal trials expands, we look to the future. Does the public understand the legal process any better because of broadcast coverage? How will broadcast coverage of trials impact legal ethics? How will it impact media ethics? Has broadcast coverage of trials really been so sensational?

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Hero or villain? In 1999, the nation's attention was focused on Dr. Jack Kevorkian, convicted of murder in Michigan for mercy killing.

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Supreme Court invalidated a licensing scheme because it did not provide for prompt judicial review. Stripped of their freewheeling power to ban films without first going to court, the censorship boards faded away.

Keyishian: Avoiding "a Pall of Orthodoxy over the Classroom"

Accusations of communism were familiar by the time of *The Miracle* case, and teachers were often the targets. A 1949 New York law required the firing of any teacher belonging to an organization that advocated the forceful overthrow of the government. A group of taxpayers and teachers challenged the law, but in 1952, the Supreme Court upheld it.

Reuters New Media Inc./CORBIS

Florida Judge Nikki Clark presides over a televised 2000 presidential election hearing.

The decision in *Adler v. Board of Education* explained that tests of political loyalty for employment were justifiably designed to stop "subversive groups" from infiltrating public schools and poisoning "young minds." A dissent from Justice William O. Douglas protested that guilt by association was "a principle repugnant to our society." And that loyalty hearings would "raise havoc with academic freedom" by turning the school system "into a spying project." Decisions such as *Adler* did indeed open the door to proceedings in which suspect teachers were asked about the books they read, the people they knew, and the nomination petitions they had signed.

It was not until 1967 that the Supreme Court reconsidered its endorsement of political tests for teachers. The new case was brought by Harry Keyishian, an English instructor at the University of Buffalo, and several of his colleagues. Each had refused to sign the state's noncommunist oath. They challenged not only the oath but also the state's listing of "subversive" organizations, its disqualification of teachers who made "seditious utterances," and its rule that Communist Party membership was automatic grounds for dismissal.

The Supreme Court now struck down the 1949 law, explaining that vague words such as *seditious* made it "a highly efficient in terrorem mechanism." It was not clear, for example, whether "the teacher who informs his class about the precepts of Marxism or the Declaration of Independence" would violate the law. The First Amendment, the Court said, "does not tolerate laws that cast a pall of orthodoxy over the classroom."

Keyishian was a landmark, but it did not presage a smooth ride for academic freedom in the years ahead. Teachers' and students' ability to study freely inevitably conflicts with educational authorities' desire to inculcate their preferred values. In 1982, the issue again reached the Supreme Court, in a case involving the removal of books by Richard Wright, Kurt Vonnegut, and others from a school library. The Court recognized school boards' power to remove books because of sexual content or vulgarity but ruled that because a library is a "mighty resource in the marketplace of ideas," authorities could not censor for "narrowly partisan or political reasons."

This distinction between sexual content and political ideas sounded a familiar theme. Despite such precedents as *Ulysses*, the Supreme Court still could not see that sexual subjects might have educational importance.

Conclusion

The trials of *Ulysses*, *The Miracle*, and *Keyishian* were turning points in America's history of cultural censorship. Of the three targets—sex, sacrilege, and sedition—only the first remains today as an area where artistic expression can be officially banned. But efforts to censor religious and political ideas have recently reappeared. From Senator Jesse Helms's attacks on *Piss Christ* in 1989 to Mayor Rudolph Giuliani's attacks on the Brooklyn Museum a decade later, government officials have tried to silence art that offends their religious beliefs.

In the wake of September 11, censorship has also taken political form. Teachers have been punished for statements that question U.S. foreign policy. Wartime often leads to loyalty tests and impoverished political discourse. The courts have responded with occasional reminders of the First Amendment's importance—but often, long after the damage has been done.

FOR DISCUSSION

What problem is presented by the use of such terms as *patent offensiveness* and *serious value* as a standard for what is or is not obscene?

On what grounds did the Supreme Court in 1962 strike down laws that required political tests for teachers??

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Trials of Culture

Students in Action

Debating Culture and the Courtroom—Past and Present

In this edition, Students in Action takes you back to the Old West, down through the years of censorship rulings, and into the present world of TV courtroom dramas, for a look at the role that culture plays in the proceedings and outcomes of trials.

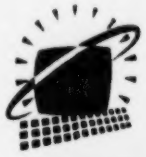
In "When Guilt or Innocence Depends on the Era," Professor Steven Lubet tells the story of the gunfight between Wild Bill Hickok and Dave Tutt—a showdown that resulted in the death of one man and the trial of the other for his murder. What do you think the verdict in a real-life trial would be when one person has faced and gunned down another in a town square? Read Professor Lubet's article for some perhaps surprising revelations about what happened in this case from the Wild West.

In "Changing Times—Changing Censorship," Wanda Routier details the shifting guidelines that U.S. courts have produced to define what may or may not be made available to Americans in literature, art, and films, and even in classrooms. You'll discover how difficult it is to define *obscenity* and how that definition changes as our culture changes. Perhaps you'll even try yourself to truly define standards for acceptability reflecting today's cultural environment.

Finally, one element that is most pervasive in today's culture is television. In "TV in the Courtroom," Gayle Mertz takes a look at television cameras pointed at trials, both fictional and real, and the effect they have—not only on the participants but also on viewers like you. You'll get the chance to read both sides of the issue on whether trials should be televised and decide for yourself what you believe.

Completing the Take Action! activities at the end of each section will help you begin to participate in and influence the public debates that your generation will encounter regarding the complex relationship between culture and the courts. For additional activities, be sure to visit insightsmagazine.org (click "Students in Action" when you get there).

Should cultural outlooks influence the outcomes of trials?



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When Guilt or Innocence Depends on the Era

by Steven Lubet

Two men face each other on a dusty street, guns holstered, trigger fingers itchy. They stand ready, hands poised, each waiting for the other to make the first move. One of the combatants, usually the bad guy, reaches for his weapon, sometimes shouting a taunt or a challenge. "Slap leather!" The firing begins, ending only when one man lies bleeding in the dust. The winner walks slowly (and quietly) away.

Such is the myth of the gunfight in the Old West. There is seldom, if ever, an aftermath. No posse, no arrest, certainly neither trial nor imprisonment. If the sheriff so much as arrives on the scene, the bystanders quickly assure him that it was a "fair fight" or perhaps "self-defense."

In the entire history of the Wild West, the closest thing to an actual "slap leather" gunfight may have been the showdown between Wild Bill Hickok and Davis Tutt in Springfield, Missouri, on July 21, 1865. Tutt and Hickok were both gamblers. They had been friends, despite the fact that Tutt, an Arkansan, was a Confederate veteran, while Hickok had been a Union scout. They eventually fell out, however, in a dispute over a woman—it was rumored that Hickok once had an affair with Tutt's sister; it may have been that Tutt paid too much attention to Wild Bill's then-sweetheart, Susanna Moore.

By July 20, 1865, the two men were avowed enemies. Hickok refused to play cards in any game involving Tutt, who retaliated by financing other players in an attempt to bankrupt Bill by other means. The confrontation came to a head during a poker game at the Old Southern Hotel. Wild Bill played while Dave Tutt watched, standing behind one of Hickok's opponents.

The game was for high stakes, and Hickok eventually won about $200. Frustrated by his losses, Tutt reminded Hickok of an old debt from a horse trade. Hickok paid the $40, but Tutt wanted more, claiming that Wild Bill owed him another $35 from a poker game (back when Hickok was still playing cards with Tutt).

Tutt picked up Wild Bill's prized Waltham repeater watch, which was lying on the table. He stated that he would keep the watch until Bill paid him the $35. Hickok was furious, but there were too many witnesses in the room for him to do anything.

Humiliated, Wild Bill warned Tutt not to wear the watch in public. Tutt sneered back that he would wear it the next morning.

"If you do, I'll shoot you," Bill replied. (Connelly, 85) He warned Tutt not to come across the town square wearing the watch.

Tutt may have been a provocateur and a fool, but he was no coward. The next day, he presented himself on the town square with Wild Bill's watch prominently displayed.

Bill approached from the other side of the square, his Colt's Dragoon revolver in hand. At a distance of about 75 yards, Hickok warned Tutt not to cross with the watch. Heedless of the warning, Tutt drew his weapon. The two men fired, so nearly simultaneously that it sounded like a single shot. Tutt was shot through the heart and died almost immediately.

The next day, July 22, a warrant was issued for Hickok's arrest on a "charge of killing." He was arrested two days later, posting bail in the amount of $2,000 after the charge was reduced to manslaughter.

The jury was empanelled on August 3, 1865, and the trial lasted three days, with testimony from 22 witnesses. Hickok was represented by Colonel John S. Phelps, a Union veteran and the wartime governor of Arkansas. The prosecutor was Major Robert W. Fyan. The presiding judge was C.B. M'Afree, another Union veteran who had commanded the army post in Springfield during the Civil War. Unfortunately, the transcript of the proceeding has been lost, although fragments of the official record have survived. There are also a few newspaper accounts from the day.

The witnesses apparently testified that Tutt entered the square wearing a linen duster, a long coat that evidently impeded his aim. The two men fired so closely together that it sounded like a single report. One witness saw a flash coming from Hickok's gun, but others saw smoke from both pistols. There was also testimony that Tutt had been the

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first to draw, after Hickok warned him against carrying the watch onto the square. Tutt's revolver was displayed to the jury with one round missing from the chamber.

Things could not have looked good for the defendant when the judge began instructing the jurors that

> To be entitled to acquittal on the ground of self-defense [the defendant] must have been anxious to avoid a conflict, and must have used all reasonable means to avoid it. If the deceased and the defendant engaged in a fight or conflict willingly on the part of each, and the defendant killed the deceased, he is guilty of the offense charged, although the deceased may have fired the first shot. (Rosa 1979, 77)

These instructions sound like curtains for Wild Bill. The fight was a foolish one, over nothing more than this display of a watch, and Bill certainly invited it, even if he did not fire the first shot. Judge M'Afee seemed to instruct the jury that a conviction was its only option under the law.

But there was more to it than the written law; there was also the law of the frontier. The court went on to elaborate:

> That when danger is threatened and impending a man is not compelled to stand with his arms folded until it is too late to offer successful resistance & if the jury believe from the evidence that Tutt was a fighting character & dangerous man & that Deft [defendant] was aware such was his character & that Tutt at the time he was shot by the Deft was advancing on him with drawn pistol & that Tutt had previously made threats of personal injury to Deft ... & that Deft shot Tutt to prevent the threatened impending injury [then] the jury will acquit. (Rosa 1996, 121–22)

In strictly legal terms, of course, the instructions seem contradictory. In cultural terms, however, the contradiction is easier to understand. The judge was offering the jurors a choice. They could follow the demands of the government's law, or they could apply the unwritten cultural law of the "fair fight." If they believed that Hickok should have walked away, then they would convict him. Alternatively, they could put themselves in Hickok's shoes. Confronted by a dangerous, aggressive opponent, he could stand his ground without risking the gallows.

Guilty or Not Guilty?

How do you think the jury decided Wild Bill's case? To find out, ask your teacher to share "Slap Leather!" on pages 7–9 in *Insights* magazine.

Take Action!

1. What do you think the outcome of Wild Bill Hickok's trial would be in the United States in 2002? With your family or friends, recollect some trials from the past two or three years in which you have disagreed with the jury. If you had been a juror, what arguments might you have used to change the jury's reasoning and verdict?

2. Offer to conduct a modern-day mock trail of Wild Bill Hickok for your class. Participants should role-play Wild Bill, the judge, the jury, and the courtroom spectators, but make the setting the main street of your community, where a shootout took place in 2002. When the foreman announces the verdict, he or she will further explain the jury's thinking in terms of its cultural outlooks.

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Changing Times—Changing Censorship

by Wanda Routier

Banned books. Protested movies. Arguments about what should—and should not—be included in a school's curriculum. What is censorship, and who should make that decision? Should one group's opinions and beliefs about what is acceptable be forced on others who may not agree?

Historically, the United States based many of its laws on those of England. Censorship laws were no exception. In the 1700s and 1800s, both countries were concerned with censoring two kinds of ideas that might be put forth in literature, art, and other forms of expression: sedition—civil disobedience or threats to overthrow the government—and blasphemy—irreverence toward God. It was not until the 1850s that obscenity (including sex) was added to that list.

What was considered obscene in the 1800s? In the 1868 case *Regina v. Hicklin*, the English Court of Queens Bench wrote this definition: A work was obscene if it tended to "deprave and corrupt those whose minds are open to such immoral influences" and "if it might suggest in the minds of the young of either sex, and even to persons of more advanced years, thoughts of a most impure and libidinous character." In other words, if someone might think "impure" thoughts after reading or viewing a work, then the court could consider the work obscene. Courts in both England and the United States used this definition of *obscenity* for nearly 100 years. "Innocence of youth" was the standard by which obscenity was judged.

Although *Hicklin* attempted to answer the question of what obscenity is, it also raised questions such as these: Should adults have the right to read or view adult material? When does one become an adult? Should adult material be banned because a young person might see it?

In 1957, the U.S. Supreme Court announced that the First Amendment does not permit the government to reduce the adult population to reading "only what is fit for children." This decision effectively rejected *Hicklin*. The Court went on to create a test for obscenity that included considering whether a work was meant for adults or minors. It also gave constitutional protection to works unless they were "utterly without redeeming social importance." The question arose, however: Who determines this vague and subjective standard? Who decides what is "redeeming social importance"?

In 1968, the Supreme Court issued a decision based on a sliding scale, or "variable obscenity" rule. This decision meant that a work protected by the First Amendment would lose all protections if the work was distributed to minors. Difficult questions persisted: What exactly was "variable obscenity" or "harmful to minors"? Who made those decisions?

Like literature and art, the film industry also experienced censorship. Initially, film was viewed as a business and not even protected as a means of expression under the First Amendment. In 1915, the U.S. Supreme Court upheld an Ohio law that banned the showing of any motion picture unless it was first submitted for approval to the state's licensing board. State licensing boards such as the Ohio board could ban any movie they determined was "indecent, immoral, sacrilegious, or otherwise harmful"—another vague and subjective standard. Examples of banned films included newsreels of police shooting at striking workers; a film version of *Carmen* because it showed women smoking in public; and, in many places, any film that protested racial segregation.

In the *Burstyn* case in the 1950s, the U.S. Supreme Court rejected the view of film as a business with no constitutional protections. The courts, however, did not remove the licensing boards until 1965, when Maryland's licensing system was ruled invalid because it did not allow for "prompt judicial review of a film to determine obscenity." From that point on, state licensing boards began to disappear.

In addition to works of literature, art, and film, censorship has also impacted personal lives and people's

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Source: Marjorie Heins, "Culture on Trial: Censorship Trials and Free Expression" (see pages 10–11, 15)

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employment. In the 1950s, states and localities had laws keeping individuals out of jobs if they were seen as having "subversive views or were members of a subversive organization." The fear was that people who were associated with subversive organizations, such as "communists," would become teachers and other government employees and "poison" the minds of young people. Teachers were asked what books they read, who their friends were, who they voted for, and other personal questions. In the 1952 case *Adler v. Board of Education*, the Supreme Court ruled that such questioning was justified to stop members of undesirable groups from influencing the minds of youth.

In the 1967 case *Keyishian v. Board of Regents*, an English instructor at the University of Buffalo disputed the requirement that forced him to sign a "loyalty oath." Such a document stated he was not, and had never been, a member of a subversive group, nor had he taught that the U.S. government should be overthrown. The Supreme Court ruled that terms such as *seditious* and *bans on advocating, teaching, or advising the doctrine of forceful overthrow* were unclear. After all, a teacher presenting the Declaration of Independence could be viewed as "teaching ... the doctrine of forceful overthrow." Vague and subjective standards such as these are not interpreted the same way by every person. Consistent enforcement of the law is, therefore, difficult.

Censorship occurs in our times as well. Senator Jesse Helms protested a religious photograph he deemed offensive, and former New York City Mayor Rudolph Giuliani attacked the Brooklyn Museum for exhibiting artwork he found offensive. As a result, some groups have lobbied the government to tie funding for the arts to religious or political approval. Does this sound similar to the film licensing boards of the past? What influence should our current cultural climate have on legal decisions about censorship? What standards will your generation define and seek to apply?

Illustration by Rick Incrocci

Take Action!

1. One of the famous trials involving the censoring of an idea for religious reasons was the Scopes "Monkey Trial" in the 1920s. John Scopes was a teacher accused of teaching the theory of evolution to his high-school biology class—an act banned by state law at the time. Watch the movie *Inherit the Wind*, which dramatizes *Scopes*. Consider the culture of the times, the style of the characters, and how their culture was reflected in the law and the trial.

2. The purpose of the *Hicklin* decision was to protect the young. Think about the need for others to decide what you need protection from. Does the responsibility for protecting young people rest entirely with adults, or do young people at some point have the maturity to make such decisions on their own? Survey five adults and five young people with these questions. Do their outlooks differ? If so, how?

3. Investigate your school district to find out whether it has a policy about what types of media are allowed in school libraries and classrooms. Have specific books or other media ever been banned? Find out whether there is a public policy to follow to object to school media. If so, as a school project, describe and discuss the policies and identify who makes these decisions. With some volunteers, determine whether and how young people can have input into handling objections from the public and selecting media.

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TV in the Courtroom

by Gayle Mertz

Televised trials, real or fictional, captivate audiences. They provide entertainment as well as food for thought regarding social and ethical issues.

Media analysts attempt to determine whether fictional trials mirror real ones or whether the coverage of real trials mimics successful TV courtroom dramas. We do know that real and fictional trials influence each other in a number of ways. Real attorneys watch televised trials (real and fictional) to get clues on how to present themselves successfully in the courtroom—what to wear, how to gesture, how close to stand to the jury. And people who find themselves in court as a defendant, witness, or juror model their behavior, intentionally or not, after that they have seen on TV.

In 1988, New York University graduate students studied the trial of John Steinberg, which was televised long before actual trials were regularly seen on TV. Steinberg was accused of abusing his lover, Hedda Nussbaum, and murdering their illegally adopted child. The student researchers interviewed 40 participants in the trial, including the judge, lawyers, expert witnesses, reporters, the defendant, and through her lawyer, Hedda Nussbaum. Their study concluded that "participants had television continually in mind." For example, it was reported that Hedda Nussbaum dressed differently after seeing television coverage of herself on the stand.

While the students determined that everyone was conscious of the cameras in the courtroom, not everyone agreed on how the cameras influenced the proceedings or the outcome of the trial. Some attorneys expressed their opinion that jurors would come down with a harsher verdict because they were being watched. The prosecutors, however, suggested that the jury, "conscious that it was sharing the trial with millions of viewers, tried so hard to be fair" that it convicted Steinberg of a lesser charge than the evidence warranted—first-degree manslaughter.

Why does any of this matter? Or does it matter? Researchers believe that televised trials (live, reenacted, and fictional) shape public attitudes about the justice system, social issues, and ethical values. Yet they often reach different conclusions about how trials on TV influence viewers.

Richard Fox, a journalist and political science professor, has written that media coverage of the sensational trials of the 1990s had had a "profound impact—and not a healthy one" on public perception of the justice system. Fox's research, however, seems to indicate that viewers are less critical of the system when a defendant is convicted rather than acquitted.

Not everyone agrees. The former chief justice of the Florida Supreme Court, who gave the go-ahead to televise trials some years ago, commented, "We adopted a philosophy that if people knew more about government because they could see it, they'd be a lot better off." Because the Florida court allows TV cameras in the courtroom, people throughout the nation had the opportunity to watch and listen as it presided over the historic presidential ballot recounting hearings in 2000.

Actual and fictional televised trials are popular and will continue to entertain and educate viewers. What the balance is between entertainment and education will continue to be debated.

Take Action!

1. Talk to three people who watched the presidential election hearings and trials in 2000. Ask them to name three things they learned about the justice system. Also ask whether the experience left them with a negative or positive view of the system. Think of some ways to change the system in order to overcome negative reactions to it.

2. Federal trials are never televised, while state trials may be. Find out about the differences between the two judicial systems. Who decides whether your state can allow televised trials? If you and your friends wish to object to the existing policy, how can you do so in order to influence a change?

3. Watch a fictional TV trial and, if possible, a real televised trial. Then visit a courtroom in your community and view a real trial. Compare and contrast the three trials. Take the best aspects of each and describe your "perfect trial."

Gayle Mertz is a writer, curriculum developer, and teacher trainer specializing in LRE. A Boulder resident, she has directed educational programs for the Colorado Supreme Court and the U.S. Departments of Education and Justice, among other governmental agencies.

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Learning Gateways

See Strategies Here

This teaching strategy introduces students to English and U.S. laws, policies, and court actions that have sought to accommodate and sometimes suppress cultural and political outlooks, and then asks them to consider the circumstances and legitimacy of various U.S. actions. Follow up with additional strategies at insightsmagazine.org. And don't miss the student materials on related topics starting on page 16.

Lesson Overview

Objectives

As a result of this lesson, students will

- Understand the English legal legacy to the United States, especially in terms of First Amendment protections
- Recognize the fragility of First Amendment free exercise and free speech protections
- Develop and be able to support positions regarding culturally and politically suppressive laws and other government actions in times of crisis

Target Group: Secondary students
Time Needed: 3 sessions, 30 minutes each
Materials Needed: Copies of Student Handout on page 23 and "Cultures, Courts, and the U.S. Constitution" (available at insightsmagazine.org—click "Students in Action")

Procedures

1. Prepare for the lesson by reading James H. Landman's article, "Trying Beliefs: The Law of Cultural Orthodoxy and Dissent," on pages 4–6.
2. Introduce the lesson by noting a recent example of some religious or political (cultural) expression that has been either silenced by a government (Taliban destruction of the Buddhas of Bamiyan) or openly criticized by a governmental official (Attorney General Ashcroft's criticism of those who oppose aspects of the prosecution of the War on Terrorism). Explain that students will examine the historical influence of dominant cultures on law and the courts in England and the past and continuing effects of this legal legacy in the United States.
3. Distribute and assign "Cultures, Courts, and the U.S. Constitution" for reading. Ask students to come to class prepared to tell about occasions when they have personally observed that a dominant group or government official or agency has—or has not—equally respected or equally protected a minority group's freedom of religious, ethnic, or political speech.
4. Have students summarize their reading and then tell their stories in small groups, sharing the best with the class. Distribute the Student Handout and discuss its format and content. Ask, "What do *Pierce v. Society of Sisters* and the sedition acts demonstrate about the fragility of First Amendment protections?" Assign volunteers to briefly report on items 1–5 under "U.S. Law," including major features, historical period, and circumstances (time of crisis, for example).
5. As each report is given, ask students to use the continuum at the bottom of the handout to determine their position on whether the government's action was justified. Have a student record the results and issue a final report.
6. Share this statement with students: "One is free to speak, but one is not immune from punishment if that speech is seditious or otherwise injurious to the common good." Do students agree? Why or why not?

Teaching Standards for This Issue

Teachers of civics, government, history, and law all over the country are working toward attaining the educational standards set forth by their local communities. To assist in this effort, each edition of *Insights on Law & Society* is designed to support national standards of major educational organizations such as the National Council for the Social Studies, the Center for Civic Education, the National Center for History in the Schools, and the American Library Association. To see the national standards supported by The Trials of Culture Edition of *Insights*, visit insightsmagazine.org (click on "Learning Gateways").

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I. U.S. Law and England's Legal Legacy

English Legal Tradition ◄——►	U.S. Law
Established church (Church of England)	First Amendment establishment clause ("Congress shall make no law respecting an establishment of religion")
Prosecution of religious dissent	First Amendment free exercise clause ("or prohibiting the free exercise thereof") **See:** 1925 *Pierce v. Society of Sisters*—Supreme Court overturns Oregon law requiring children to attend public, not parochial, schools

II. Political Beliefs and the Law

English Legal Tradition ◄——►	U.S. Law
Treason Act of 1352 defines *treason* as	U.S. Constitution defines *treason* as
▪ levying war against England ▪ giving aid and comfort to the enemy ▪ imagining the death of the king	▪ levying war against the U.S. ▪ giving aid and comfort to enemies
Law of seditious libel—criticism of public persons or the government. Truth is not a defense.	First Amendment ("Congress shall make no law abridging the freedom of speech") **But:** 1. 1798 Alien and Sedition Acts 2. 1918 Sedition Act 3. 1940 Alien Registration Act 4. 1919 *Abrams v. U.S.*—Supreme Court upholds conviction of five for criticizing U.S. during World War I 5. "Extralegal" measures: House Committee on Un-American Activities; FBI surveillance

Congress has enacted several sedition acts over the course of U.S. history. All were passed in times of great uncertainty, when the nation was on the brink of or actively engaged in war. Tolerance of dissidence tended to be low, and distrust of cultural "outsiders" ran high. Historically, in such times of crisis, U.S. courts have allowed the government to restrict speech that may pose a threat to it. Throughout the twentieth century, the Supreme Court struggled to define a workable balance between the right of free speech and the need of the federal government to protect national security, including the test that spoken or published words present "a clear and present danger" of substantive evils that Congress has the right to prevent.

Continuum

Justified ——— **Unjustified**

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Trials of Culture

Supreme Court Roundup

by Charles F. Williams

Midterm Report

The Supreme Court's 2001–2002 term just keeps getting more interesting. Among the cases on the docket are three that are likely to be of special interest to the educational community.

- *Owasso Independent School District v. Falvo*, No. 00-1073, which asked whether federal law permits students to grade each other's work in class
- *Board of Education of Independent School District No. 92 of Potawatomie County v. Earls*, No. 01-332, in which the Court will determine whether the Fourth Amendment bars a public school district from requiring students who wish to participate in extracurricular activities to submit to random, suspicionless urinalysis drug testing
- *Watchtower Bible and Tract Society of New York v. Village of Stratton*, No. 00-1737, in which the Court will consider whether the First Amendment bars local government from requiring activists to obtain a permit before engaging in door-to-door advocacy

Pop Quiz

In oral arguments held November 27, 2001, the attorneys in the Owasso Independent School District case debated whether Congress, in enacting the Family Educational Rights Privacy Act, 20 U.S.C. § 1232g, intended to prohibit the common practice of student "peer grading" of routine homework papers, quizzes, and tests.

Peer grading, at least as practiced in Tulsa, Oklahoma, where this case arose, entails having students exchange their papers and grade them as the teacher calls out the correct answers. After the graded papers are returned, the students may then be asked to "call out" their grades so that the teacher can record them.

Kristja Falvo, the mother of a special education student who was being "mainstreamed" into a regular middle-school classroom, believed that Congress meant to protect students' privacy by requiring teachers not to disclose their grades to other students. Thus, in Falvo's view, having her son's quizzes and papers peer-graded violated the Family Educational Rights Privacy Act, which precludes an educational institution from receiving federal funds if it has a policy or practice of allowing disclosure of education records to unauthorized individuals without parental consent.

The school district and the U.S. government countered that Congress did not intend the statute to apply to routine classroom activities but was concerned only with safeguarding the confidentiality of information that could have a long-term negative impact on a student's academic or career opportunities.

The trial court agreed with the school district, but the Tenth Circuit Court of Appeals reversed and held that peer grading does indeed violate the federal law.

On February 19, 2002, the Supreme Court unanimously ruled that peer grading does not violate the Family Educational Rights Privacy Act of 1974. The Court said it doubted Congress meant the Act to authorize the federal government "to exercise minute control over specific teaching methods and instructional dynamics in classrooms throughout the country."

Seven justices joined Justice Anthony Kennedy's opinion, which concluded that even "assuming" a teacher's grade book is an education record, the grades students place on each other's papers are not student records covered by the Act—"at least until the teacher has recorded them."

Fill the Bottle?

Coming up for oral arguments on March 19 is an intriguing case that pits the Fourth Amendment against government officials' determination to detect and deter student drug use. *Board of Education v. Earls* arose when Lindsay Earls, a sophomore at Tecumseh High School in Tecumseh, Okla., objected to being repeatedly pulled out of class to provide school officials with a sample of her urine. The officials were demanding the samples pursuant to a school district policy that called for random urinalysis drug testing of any student seeking to participate "in any extracurricular activity such as FFA [Future Farmers of America], FHA [Future Homemakers of America], Academic Team, Band, Vocal, Pom Pom, Cheerleader and Athletics."

Charles F. Williams is the editor of PREVIEW of U.S. Supreme Court Cases, *a publication of the ABA Division for Public Education in Chicago.*

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Although school authorities did not suspect that Earls was actually abusing drugs, and although she never tested positive for drugs, she was repeatedly and randomly tested as the result of participating in the school's choir, marching band, and academic team. According to the trial court in this case, the testing process worked like this:

> [T]he students to be tested are called out of class in groups of two or three. The students are directed to a restroom, where a faculty member serves as a monitor. The monitor waits outside the closed restroom stall for the student to produce the sample. The monitor pours the contents of the vial into two bottles. Together, the faculty monitor and the student seal the bottles. The student is given a form to sign, which is placed, along with the filled bottles, into a mailing pouch in the presence of the student. *Earls v. Board of Education*, 115 F. Supp. 2d at 1290–91 (W.D. Okla. 2000).

The trial court concluded that this sort of random, suspicionless drug testing of any student wishing to engage in any extracurricular activity does not violate the Fourth Amendment's prohibition against unreasonable searches. The Tenth Circuit Court of Appeals, however, reached the opposite conclusion and reversed.

In the Supreme Court, the school district is likely to argue that its policy is constitutional pursuant to a 1995 Supreme Court case called *Vernonia School District v. Acton*, 515 U.S. 646, which upheld a random drug-testing policy for student athletes in the town of Vernonia, Ore. Writing for the Court in that case, Justice Scalia agreed that the state-compelled collection and testing of urine constitutes a "search" under the Fourth Amendment but concluded that the searches were reasonable in the circumstances of that case.

Among other things, Scalia noted that the Vernonia drug-testing policy applied only to students engaged in athletics, "where the risk of physical harm to the user and other players is high," and where the students already have a diminished expectation of privacy, given that "an element of communal undress is inherent in athletic participation, and athletes are subject to preseason physical exams and rules regulating their conduct."

In addition, Scalia noted, the lower courts and school officials in that case had identified a serious and growing drug problem at Vernonia, and "not only were student athletes included among the drug users; but, as the District Court found, athletes were the leaders of the drug culture."

Earls is likely to argue that the situation in her case is different from that in Vernonia: there is no comparable drug culture at Tecumseh, and the policy to which she objects is being applied to all extracurricular participants, not just athletes. The outcome of her case, however, is likely to depend on whether the Court concludes those factual differences are enough to make a constitutional difference.

Anonymous Activism

Since the 1940s, the Jehovah's Witnesses have often invoked the First Amendment's religion clauses to protect their ability to engage in the proselytizing that is central to their faith. At issue in the *Watchtower* case is an ordinance regulating "canvassers, solicitors, peddlers and hawkers" who wish to engage in door-to-door soliciting at private homes in the village of Stratton, Ohio.

The trial court struck down several aspects of the ordinance. It ordered the village to delete a reference to the Jehovah's Witnesses that appeared on the "no solicitation" form it offers to residents who wish to bar some or all solicitors. It also struck the 5 p.m. limit on evening door-to-door solicitations (the court deemed this unreasonably restrictive) as well as a provision requiring canvassers to list every residence they wished to visit (the court deemed this unreasonably onerous). It upheld the balance of the ordinance, however, including its requirement that canvassers register with the village prior to going door to door.

The Sixth Circuit affirmed, reasoning that the village was entitled to promulgate an ordinance that was narrowly tailored to promote its interests in preventing fraud and in protecting its residents from unwanted annoyance. The ordinance does not foreclose the Witnesses from going door to door, the court pointed out. It only requires them to register first. And, said the court, if the Witnesses do not want to register, "there are several alternatives to door-to-door canvassing: Jehovah's Witnesses may spread their message at stores, on street corners, in restaurants, in parks, and other public forums."

Research Tool

For updates, more information, and additional resources about these and other Supreme Court cases, visit insightsmagazine.org (click "Supreme Court Roundup").

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Trials of Culture

News from Capitol Hill

by Ann Simeo Heinz

Review of Issues Facing Congress

In January, lawmakers returned to Washington, D.C., to begin what is expected to be a contentious legislative session dominated by debate over the war on terrorism, homeland security, and the economy. In the coming months, Congress will also be debating a proposed health tax credit for low- and middle-income workers who are not covered by public or employer-provided health plans. In addition, President Bush's proposed budget for fiscal 2003, in which $48 billion is sought for new defense spending, will be deliberated.

Education

The year began with President Bush signing into law an education bill that is viewed as the most significant revision of school policy in nearly 40 years. The law expands the federal government's role in education by requiring mandatory state-administered reading and math tests and sanctions schools whose students repeatedly fail to improve their scores.

Election Reform

After the 2000 election, several Congressional members proposed election reform legislation. However, work on these measures was postponed as the nation grappled with the aftermath of the September 11 terrorist attacks. Then, in December 2001, the House overwhelmingly passed H.R. 3295, which would authorize $400 million in state grants to replace punch-card voting devices like the ones that caused problems in the 2000 election. States could use the rest of the funds to improve election administration by training poll workers, maintaining more accurate voting rolls, and encouraging higher voter turnouts.

Campaign-Finance Reform

After years of debate and controversy, the House and Senate have passed the Shays-Neehan campaign finance reform bill, which bans broadcasts that mention federal candidates during election cycles as well as "soft money" contributions. Although President Bush has signed this legislation, it still faces several tests from the courts. Groups opposing the legislation, including the ACLU and Sen. Mitch McConnell, have said that they intend to challenge the bill's constitutionality.

Retirement Plans

After thousands of Enron employees lost much, if not all, of their retirement savings in the wake of the company's collapse, Congress is now facing growing pressure to modify the rules applicable to 401(k) plans. Several bills are currently floating through Congress to address pension reform. Key areas to address include setting a maximum percentage of company stock that can be owned, easing restrictions on the sale of stock by employees, and prohibiting mandatory purchases of company stock. Whatever lawmakers decide, a significant amount of money is at stake: at the end of 2000, 401(k) plans held nearly $1.8 trillion in assets.

2002 Elections

Congressional leaders have been focusing on the upcoming November midterm elections. Because the partisan split in both the House and Senate is so slight, the balance of power in either or both could be upset if even a few seats change parties. Currently, the Republicans hold a six-seat margin in the House, while the Democrats hold a one-seat margin in the Senate. In the House, all 435 seats are up for reelection; 34 seats will be contested in the Senate.

Proposed Congressional Bills

Students and teachers can review an annotated inventory of congressional bill proposals by visiting insightsmagazine.org. Grouped by subjects such as "Election Law" and "Health Law," the bills have been chosen because of their probable interest and usefulness in educational settings. To research any congressional bill by bill name and number, visit thomas.loc.gov

For additional activities and the full text of this article, visit

insightsmagazine.org

Ann Simeo Heinz is an attorney, editor, and writer working in Chicago.

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Two-Party System's Development

Although not specifically mentioned in the Constitution, political parties emerged soon after its adoption. Initially, Federalists favored strong central government, while Democratic-Republicans opposed it and desired government policies that made it easier to borrow money. Members of Congress drifted loosely between the two groups. Factions quickly formed, however, and, by the mid-1790s, the existence of two parties became apparent.

By the 1816 elections, the Federalist Party was a small minority in Congress. The Democratic-Republican Party grew tremendously in size and power. Soon, however, internal factions developed, as various regional groups tried to gain influence in the only national political organization. Within a few years, two parties emerged: the National Republicans, who favored internal economic development projects and protective tariffs, and the Democrats, who felt that the voice of the common people should predominate in government.

For the next 30 years, the Democrats were the dominant party in Congress. During this time, the National Republicans changed their name to the Whigs. Although the Whigs won the presidency twice, they faded rapidly during the 1850s. In their place rose the Republican Party. For nearly 70 years, the Republican Party controlled Congress and the presidency. During this period, the role of the two parties became much more important. House and Senate leaders developed a strong grip over their parties' rank-and-file members.

Despite some attacks on the increased powers of the two parties, the system of party control developed into a formal institution. During the 1910s, Senate Democrats and Republicans elected a single member to serve both as party caucus chair and as floor leader. Soon after, the majority and minority leaders of their parties became their parties' acknowledged spokespeople on the floor.

In 32 of the last 34 elections since the Civil War, the president's party has suffered losses during midterm elections. Even in times of war when voters have rallied around the president, they have simultaneously removed his party from control of the House. For example, during World War II, Franklin D. Roosevelt, a Democrat, watched as his party lost 45 House seats. In recent years, this phenomenon has continued (see table).

First-Term Changes in President's Party's Congressional Seats

Year	President	Chamber		Total
		HOUSE	SENATE	
1954	Eisenhower (R)	-18	-1	-19
1962	Kennedy (D)	- 4	+3	- 1
1966	Johnson (D)	-47	-4	-51
1970	Nixon (R)	-12	+2	-10
1978	Carter (D)	-15	-3	-18
1982	Reagan (R)	-26	+1	-25
1990	G.H.W. Bush (R)	- 8	-1	- 9
1994	Clinton (D)	-54	-9	-63

Even so, the outcome of the upcoming 2002 election is far from certain. Although Democrats typically benefit when the economy is doing poorly, many Americans blame the terrorist attacks rather than the Republicans for the lackluster economy. Also adding to election uncertainty is the congressional redistricting that occurs every decade. Many states have yet to complete the reapportionment, which may alter the picture for incumbents and challengers alike.

Activity Ideas!

1. Have students find out how the representative from their district voted on H.R. 3295 (election reform). Encourage them to write, e-mail, or call their representative and senators to express their views about this vote and the future of election reform proposals in Congress.

2. President Bush has remarked that the campaign-finance reform bill is flawed but better than the current system. Opponents say it is greatly in violation of the First Amendment and will not withstand their court challenge if it becomes law. Have students report biweekly on the bill's progress as it goes to the president and, if signed, faces court battles.

3. (a) Have students post a copy of the table, leaving blanks for G.W. Bush in 2002. Discuss the voting pattern and ask students why they think it exists. Add the 2002 figures after the midterm, and discuss whether the pattern continued and why.

   (b) Optional: Have volunteers add the two-term presidents' second-term figures for 1958, 1974, 1986, and 1998, identifying any pattern and comparing it to that of their first-term figures. Ask students to determine and report on any significance they might see in this comparison.

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Trials of Culture

Teaching with the News

by James H. Landman

Crimes Against Culture

Early last year, the world watched as Afghanistan's ruling Taliban destroyed two priceless statues of Buddha in the central Afghan town of Bamiyan. Also last year, indictments were brought against Slobodan Milosevic, former president of the Federal Republic of Yugoslavia, for, among other things, "destruction or willful damage done to historic monuments and institutions dedicated to education or religion." Destruction of such monuments can be considered crimes against culture. Here's more about this important issue involving international law, including ways to weave the topic into your classroom instruction.

Wanton and Irreparable Destruction

In 2001, the Buddhas of Bamiyan, carved sometime between the third and fifth centuries A.D., were reduced to rubble by Taliban forces for being "contrary to the belief" of that fundamentalist Islamic regime, even though the action was widely denounced in the Muslim world. At the time, Koichiro Matsuura, Director-General of the U.N. Education, Scientific, and Cultural Organization (UNESCO), accused the Taliban of committing a crime against culture, one requiring a "new type of sanctions" by the international community.

The indictments brought against Slobodan Milosevic in the International Criminal Tribunal for the former Yugoslavia (ICTY) included violations of the laws or customs of war. Prominent among the alleged violations was the 1991 bombing of Dubrovnik by forces under Milosevic's command. Dubrovnik's Old City, designated a UNESCO World Cultural Heritage Site in 1979, was extensively damaged in the targeted attack. According to the indictments, no military targets were located within the Old City.

The crimes against culture allegedly committed by the Taliban and Milosevic's forces, wanton and irreparable as they were, may still pale in comparison to the human suffering and atrocities of which both the Afghan and Yugoslav leaders have been accused. UNESCO's own Web site poses the question "Why care about monuments?" when lives are being lost, families are becoming refugees, and children are being maimed. Should the international community pay attention to cultural destruction when the destruction of human life remains a pressing concern? And what authority can the international community claim to prosecute violators of cultural sites within a sovereign nation, especially when that nation's leaders are the accused perpetrators?

International Authority Claims

The claim for international authority over crimes against culture has strengthened greatly over the past 50 years. International concern for the protection of cultural heritage began to grow in the wake of the devastation wrought by World War II. From the 1950s to the 1970s, three international treaties were adopted under UNESCO's auspices to protect cultural property during times of armed conflict, prevent the illicit trade in cultural property, and establish a system to designate significant sites of World Cultural Heritage.

There now seems to be clear international consensus that the deliberate destruction of cultural property during times of armed conflict constitutes a war crime. The current draft of the Rome Statute, which will establish an International Criminal Court, defines an intentional attack on historic monuments as a war crime if there was no military objective for the attacks. Similarly, the statute that gives ICTY its authority to try accused war criminals from the former Yugoslavia defines willful damage done to historic monuments as a violation of the laws of war. Accordingly, the indictment against Milosevic for the bombing of Dubrovnik's culturally protected Old City seems well within the provisions of international law.

The incident in Afghanistan, which did not occur during an armed conflict, is not so clearly controlled by international law. UNESCO's own director-general admitted that the current structure of international law protecting cultural heritage did not apply to the destruction of cultural sites outside wartime and urged

Additional Information

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the international community to press for greater sanctions in such instances. But how far should the international community be able to intervene in the protection of cultural sites within a nation's borders?

The loss of the Afghan Buddhas is tragic. But is it greater than the loss of a cultural monument to a new commercial development or to the construction of a dam or roadway? In all instances,

Former Yugoslav President Slobodan Milosevic claims the U.N. tribunal prosecuting him for war crimes and genocide in Kosovo and Bosnia is in violation of the European Convention on Human Rights.

a unique object of perhaps immeasurable value is gone. UNESCO treaties currently provide that no cultural site can receive official World Cultural Heritage designation without the agreement of the country in which it is located. This would suggest that, notwithstanding international interest in preserving world heritage, a necessary first step to afford a cultural site protection is the agreement of the "host country."

Trade-Off in Human Life?

Equally complex is the response to the second question: "Why protect cultural monuments when so many human lives still need protection?" UNESCO's own answer to this question is that when refugees and other survivors of an armed conflict are finally able to return home, an intact fabric of cultural sites and monuments helps reestablish identity, rebuild the community, and reconnect the present with the past.

Others have made an even more forceful case. In the 1800s, playwright Heinrich Heine wrote that "where they have burned books, they will end in burning people." The same connection has proved true in the destruction of cultural sites and monuments. In the Balkan conflict, the campaign of "ethnic cleansing" for which Milosevic and his comrades now stand trial included the targeted destruction of the cultural fabric—mosques, churches, museums, schools—associated with the "other" ethnicity whose presence was to be "cleansed" from the countryside. An international panel convened in 1994 to discuss the protection of cultural heritage in wartime noted that "the destruction of historic records, monuments and memories serves ... the purpose of suppressing all that bears witness that the threatened people were ever living in the area." Such acts, the panel concluded, "are equal parts of the same strategy: to eliminate a race or a group of people."

The answer to the question Why protect culture? may depend on how sharply one can draw a line between people and the cultural monuments that are an expression of their lives and heritage. Too often, those who would do harm to a group have recognized how closely the people are linked to their cultural heritage and how much attacks on that heritage can injure the people who share it. Perhaps an increase of respect for the world's cultural heritage may in turn increase respect for the world's people.

Books

These titles offer unique perspectives on issues surrounding cultural heritage.

Levinson, Sanford. *Written in Stone: Public Monuments in Changing Societies*. Durham, N.C.: Duke University Press, 1998. Explores the problem of historic monuments to figures or events no longer admired or even repulsive to modern sensibilities.

Lowenthal, David. *The Heritage Crude and the Spoils of History*. New York: Cambridge University Press, 1998. Offers a wide-ranging analysis of the new global interest in cultural heritage.

Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998. Final chapter assesses the importance of public monuments in the aftermath of attempted genocide.

Sax, Joseph L. *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures*. Ann Arbor: University of Michigan Press, 1999. Argues for the need to rethink conventional notions of ownership for artistic treasures, architecturally significant buildings, and other forms of cultural property.

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Media Specialist's Corner

Compiled by Jennifer Kittlaus

Here's a Useful Tool ...

We hope you will find this information useful whether you are a student researching this issue's theme, a teacher preparing a lesson, or a library media specialist assisting students or teachers in tracking down additional resources for their course work. As a library media specialist, you might also find the column helpful as a selection tool for collection development purposes. Each print edition offers, among other resources, annotated Web sites with primary documents that students may need to locate and annotated booklists that relate to the issue's topic. The Web site features full bibliographic information and selected reviews for booklist entries as well as Web links to additional research and instructional support. Your feedback is always appreciated.

Primary Documents for Students

1873 Comstock Act (18 U.S.C. 1461)
www4.law.cornell.edu/uscode/18/1461.html

The first piece of national legislation to make obscene expression illegal.

Communications Act of 1934
www4.law.cornell.edu/uscode/47/151.html

The act establishing the Federal Communications Commission to regulate interstate and foreign commerce in communication by wire and radio.

Communications Decency Act of 1996
www.epic.org/cda/cda.html

The first attempt made by Congress to regulate indecent or obscene material on the Internet. Passed in 1996 and later deemed unconstitutional in *Reno et al. v. American Civil Liberties Union et al.*, 521 U.S. 844 (1997).

Child Online Protection Act of 1998
Original Statute: www.copacommission.org/commission/original.shtml
Amended Statute: www.copacommission.org/commission/amended.shtml

Seeks to define the Communications Decency Act's key terms and limit its application to commercial Web entities; chat rooms, bulletin boards, and ordinary e-mail to remain unaffected. Found unconstitutional by a U.S. District Court and appealed to the U.S. Supreme Court, with decision forthcoming during 2001 term.

FindLaw Selected Supreme Court Obscenity Decisions
www.findlaw.com/01topics/06constitutional/cases.html

Links to Supreme Court decisions dealing with obscenity issues.

Books

Chiasson, Lloyd, ed. *The Press on Trial: Crimes and Trials as Media Events.* Westport, Conn.: Praeger, 1997.

Tells the story of 16 significant American trials and their media coverage.

Conot, Robert E. *Justice at Nuremberg.* 1983. Reprint. New York: Carroll & Graf, 1984.

In one volume, the full story of the crimes committed by Nazis and the outcomes of their trials.

Dickler, Gerald. *On Trial: History-making Trials from Socrates to Oppenheimer.* Avenel, N.J.: Grammercy, 1993.

Accounts of 13 famous trials; includes social and historical context and excerpts from actual testimony.

Geis, G., and Leigh B. Bienen. *Crimes of the Century: From Leopold and Loeb to O.J. Simpson.* Boston: Northeastern University Press, 1998.

An informative analysis of five of the most famous criminal trials of the last century.

Goldfarb, Ronald L. *TV or Not TV: Television, Justice, and the Courts.* New York: New York University Press, 2000.

A persuasive argument for cameras in the courtroom.

Goodman, James. *Stories of Scottsboro.* New York: Pantheon, 1994.

In-depth analysis of the Scottsboro trials from different points of view.

Hamilton, Virginia. *Anthony Burns: The Defeat and Triumph of a Fugitive Slave.* New York: Random House, 1988.

Award-winning book about the trial of Anthony Burns, a Virginia slave who escaped to Boston in 1854.

Irons, Peter. *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court.* New York: Penguin, 1988.

Focuses on 16 cases involving religion, race, protest, and privacy that span five decades.

Jarvis, Robert M., and Paul R. Joseph, eds. *Prime Time Law: Fictional Television as Legal Narrative.* Durham, N.C.: Carolina Academic Press, 1998.

Examines the depiction of lawyers and legal issues in fictional TV.

Come online to link to professional book reviews and excellent online resources for librarians, students, and teachers looking for additional support on the topic of culture and the courts.

Jennifer Kittlaus is an editor and program manger for school programs at the ABA Division for Public Education in Chicago.

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Knappman, Edward W., ed. *Great American Trials*. Detroit: Visible Ink Press, 1994.

Informative and entertaining look at 200 historically and legally important, notorious courtroom trials of the past 300 years.

Lubet, Steven. *Nothing But the Truth: Why Trial Lawyers Don't, Can't, and Shouldn't Have to Tell the Whole Truth*. New York: New York University Press, 2001.

Novel and engaging analysis of the role of storytelling in trial advocacy.

McLynn, Frank. *Famous Trials: Cases That Made History*. Pleasantville, N.Y.: Reader's Digest Association, Inc., 1995.

Extraordinary survey of momentous courtroom confrontations spanning 2,000 years of history; showcases eloquent defenses, powerful prosecutions, and controversial verdicts.

Motley, Constance Baker. *Equal Justice Under Law*. New York: Farrar Straus and Giroux, 1998.

Inside story of the great efforts leading to the Supreme Court's decision in *Brown v. Board of Education*, the fight to implement it, and its implications for affirmative action and black poverty today.

Persico, Joseph E. *Nuremberg: Infamy on Trial*. New York: Viking Penguin, 1994.

Chilling portraits of Nazi warlords and detailed accounts of their trials.

Taylor, Telford. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. New York: Knopf, 1992.

Thorough, impeccably accurate account of the Nuremberg trials.

Zeinert, Karen. *The Amistad Slave Revolt and American Abolition*. North Haven, Conn.: Linnet Books, 1997.

Traces the 1839 revolt of Africans on the *Amistad* slave ship, their apprehension, and the long Supreme Court trial ending in their acquittal.

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The Nuremberg trials were held to judge whether World War II German leaders had committed war crimes including crimes against humanity. Emphasized was the idea that soldiers and others have a moral duty to disobey inhumane orders and laws. Critics found sentences harsh and the victors hypocritical in conducting the trials.

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